



General Assembly

**Bill No. 5050**

February Session, 2006

LCO No. 687

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Referred to Committee on Government Administration and Elections

Introduced by:

REP. WARD, 86<sup>th</sup> Dist.

SEN. DELUCA, 32<sup>nd</sup> Dist.

**AN ACT CONCERNING THE STATE SET-ASIDE PROGRAM.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 4a-60g of the general statutes is repealed and the  
2 following is substituted in lieu thereof (*Effective January 1, 2007*):

3 (a) As used in this section and sections 4a-60h to 4a-60j, inclusive,  
4 the following terms have the following meanings:

5 (1) "Small contractor" means any contractor, subcontractor,  
6 manufacturer or service company (A) [which] that has been doing  
7 business under the same ownership [and] or management and has  
8 maintained its principal place of business in the state, for a period of at  
9 least one year immediately prior to the date of application for  
10 certification under this section, (B) [which had gross revenues not  
11 exceeding ten million dollars in the most recently completed fiscal year  
12 prior to such application] that meets the size standard established by  
13 the Department of Administrative Services pursuant to section 2 of this

14 act, for the business sector in which such contractor, subcontractor,  
15 manufacturer or service company primarily operates, and (C) at least  
16 fifty-one per cent of the ownership of which is held by a person or  
17 persons who exercise operational authority over the daily affairs of the  
18 business and have the power to direct the management and policies  
19 and receive the beneficial interests of the business, except that a  
20 nonprofit corporation shall be construed to be a small contractor if  
21 such nonprofit corporation meets the requirements of subparagraphs  
22 (A) and (B) of this subdivision.

23 (2) "State agency" means each state board, commission, department,  
24 office, institution, council or other agency with the power to contract  
25 for goods or services itself or through its head.

26 (3) "Minority business enterprise" means any small contractor (A)  
27 fifty-one per cent or more of the capital stock, if any, or assets of which  
28 are owned by a person or persons (i) who exercise operational  
29 authority over the daily affairs of the enterprise, (ii) who have the  
30 power to direct the management and policies and receive the beneficial  
31 interest of the enterprise, and (iii) who are members of a minority, as  
32 such term is defined in subsection (a) of section 32-9n, (B) who is an  
33 individual with a disability, or (C) which is a nonprofit corporation in  
34 which fifty-one per cent or more of the persons who (i) exercise  
35 operational authority over the enterprise, and (ii) have the power to  
36 direct the management and policies of the enterprise are members of a  
37 minority, as defined in this subsection, or are individuals with a  
38 disability.

39 (4) "Affiliated" means the relationship in which a person directly, or  
40 indirectly through one or more intermediaries, controls, is controlled  
41 by or is under common control with another person.

42 (5) "Control" means the power to direct or cause the direction of the  
43 management and policies of any person, whether through the  
44 ownership of voting securities, by contract or through any other direct  
45 or indirect means. Control shall be presumed to exist if any person,

46 directly or indirectly, owns, controls, holds with the power to vote, or  
47 holds proxies representing, twenty per cent or more of any voting  
48 securities of another person.

49 (6) "Person" means any individual, corporation, limited liability  
50 company, partnership, association, joint stock company, business trust,  
51 unincorporated organization or other entity.

52 (7) "Individual with a disability" means an individual (A) having a  
53 physical impairment that substantially limits one or more of the major  
54 life activities of the individual, or (B) having a record of such an  
55 impairment.

56 (8) "Nonprofit corporation" means a nonprofit corporation  
57 incorporated pursuant to chapter 602 or any predecessor statutes  
58 thereto.

59 (b) It is found and determined that there is a serious need to help  
60 small contractors, minority business enterprises, nonprofit  
61 organizations and individuals with disabilities to be considered for  
62 and awarded state contracts for the construction, reconstruction or  
63 rehabilitation of public buildings, the construction and maintenance of  
64 highways and the purchase of goods and services. Accordingly, the  
65 necessity, in the public interest and for the public benefit and good, of  
66 the provisions of this section, sections 4a-60h to 4a-60j, inclusive, and  
67 sections 32-9i to 32-9p, inclusive, is declared as a matter of legislative  
68 determination. Notwithstanding any provisions of the general statutes  
69 to the contrary, and except as set forth herein, the head of each state  
70 agency and each political subdivision of the state other than a  
71 municipality shall set aside in each fiscal year, for award to small  
72 contractors, on the basis of competitive bidding procedures, contracts  
73 or portions of contracts for the construction, reconstruction or  
74 rehabilitation of public buildings, the construction and maintenance of  
75 highways and the purchase of goods and services. Eligibility of  
76 nonprofit corporations under the provisions of this section shall be  
77 limited to predevelopment contracts awarded by the Commissioner of

78 Economic and Community Development for housing projects. The  
79 total value of such contracts or portions thereof to be set aside by each  
80 such agency shall be at least twenty-five per cent of the total value of  
81 all contracts let by the head of such agency in each fiscal year,  
82 provided that neither: (1) A contract that may not be set aside due to a  
83 conflict with a federal law or regulation; or (2) a contract for any goods  
84 or services which have been determined by the Commissioner of  
85 Administrative Services to be not customarily available from or  
86 supplied by small contractors shall be included. [, except that the head  
87 of any such agency may set aside an amount based on the amount of  
88 all contracts not excluded from the calculation which are anticipated to  
89 be let in any fiscal year if the method of calculation for such year  
90 would result in a maximum value of contracts to be set aside of less  
91 than twenty-five per cent of the contracts anticipated to be let in such  
92 year or in a minimum value of contracts to be set aside of greater than  
93 twenty-five per cent of the contracts anticipated to be let in such year.]  
94 Contracts or portions thereof having a value of not less than  
95 twenty-five per cent of the total value of all contracts or portions  
96 thereof to be set aside shall be reserved for awards to minority  
97 business enterprises.

98 (c) The head of any state agency or political subdivision of the state  
99 other than a municipality may, in lieu of setting aside any contract or  
100 portions thereof, require any general or trade contractor or any other  
101 entity authorized by such agency to award contracts, to set aside a  
102 portion of any contract for subcontractors who are eligible for set-aside  
103 contracts under this section. Nothing in this subsection shall be  
104 construed to diminish the total value of contracts which are required to  
105 be set aside by any state agency or political subdivision of the state  
106 other than a municipality pursuant to this section.

107 (d) The heads of all state agencies and of each political subdivision  
108 of the state other than a municipality shall notify the Commissioner of  
109 Administrative Services of all contracts to be set aside pursuant to  
110 subsection (b) or (c) of this section at the time that bid documents for

111 such contracts are made available to potential contractors.

112 [(e) In no case shall the Commissioner of Administrative Services  
113 recommend, nor shall any small contractor be awarded, any such  
114 contract or contracts, the total amount of which exceeds ten million  
115 dollars in any one fiscal year.]

116 [(f)] (e) The awarding authority shall require that a contractor or  
117 subcontractor awarded a contract or a portion of a contract under this  
118 section perform not less than fifteen per cent of the work with the  
119 workforces of such contractor or subcontractor and shall require that  
120 not less than twenty-five per cent of the work be performed by  
121 contractors or subcontractors eligible for awards under this section. A  
122 contractor awarded a contract or a portion of a contract under this  
123 section shall not subcontract with any person with whom the  
124 contractor is affiliated. No person who is affiliated with another person  
125 shall be eligible for awards under this section if both affiliated persons  
126 considered together would not qualify as a small contractor or a  
127 minority business enterprise under subsection (a) of this section. The  
128 awarding authority shall require that a contractor awarded a contract  
129 under this section submit, in writing, an explanation of any  
130 subcontract entered into with any person that is not eligible for awards  
131 under this section.

132 [(g)] (f) The awarding authority may require that a contractor or  
133 subcontractor awarded a contract or a portion of a contract under this  
134 section furnish the following documentation: (1) A copy of the  
135 certificate of incorporation, certificate of limited partnership,  
136 partnership agreement or other organizational documents of the  
137 contractor or subcontractor; (2) a copy of federal income tax returns  
138 filed by the contractor or subcontractor for the previous year; and (3)  
139 evidence of payment of fair market value for the purchase or lease by  
140 the contractor or subcontractor of property or equipment from another  
141 contractor who is not eligible for set-aside contracts under this section.

142 [(h)] (g) The awarding authority or the Commissioner of

143 Administrative Services or the Commission on Human Rights and  
144 Opportunities may conduct an audit of the financial, corporate and  
145 business records and conduct an investigation of any small contractor  
146 or minority business enterprise which applies for or is awarded a  
147 set-aside contract for the purpose of determining eligibility for awards  
148 or compliance with the requirements established under this section.

149 [(i)] (h) The provisions of this section shall not apply to any state  
150 agency or political subdivision of the state other than a municipality  
151 for which the total value of all contracts or portions of contracts of the  
152 types enumerated in subsection (b) of this section is anticipated to be  
153 equal to ten thousand dollars or less.

154 [(j)] (i) In lieu of a performance, bid, labor and materials or other  
155 required bond, a contractor or subcontractor awarded a contract under  
156 this section may provide to the awarding authority, and the awarding  
157 authority shall accept a letter of credit. Any such letter of credit shall  
158 be in an amount equal to ten per cent of the contract for any contract  
159 that is less than one hundred thousand dollars and in an amount equal  
160 to twenty-five per cent of the contract for any contract that exceeds one  
161 hundred thousand dollars.

162 [(k)] (j) (1) Whenever the awarding agency has reason to believe that  
163 any contractor or subcontractor awarded a set-aside contract has  
164 wilfully violated any provision of this section, the awarding agency  
165 [may] shall send a notice to such contractor or subcontractor by  
166 certified mail, return receipt requested. Such notice shall include: (A) A  
167 reference to the provision alleged to be violated; (B) a short and plain  
168 statement of the matter asserted; (C) the maximum civil penalty that  
169 may be imposed for such violation; and (D) the time and place for the  
170 hearing. Such hearing shall be fixed for a date not earlier than fourteen  
171 days after the notice is mailed.

172 (2) The awarding agency shall hold a hearing on the violation  
173 asserted unless such contractor or subcontractor fails to appear. The  
174 hearing shall be held in accordance with the provisions of chapter 54.

175 If, after the hearing, the awarding agency finds that the contractor or  
176 subcontractor has wilfully violated any provision of this section, the  
177 awarding agency shall suspend all set-aside contract payments to the  
178 contractor or subcontractor and may, in its discretion, order that a civil  
179 penalty not exceeding ten thousand dollars per violation be imposed  
180 on the contractor or subcontractor. If such contractor or subcontractor  
181 fails to appear for the hearing, the awarding agency may, as the facts  
182 require, order that a civil penalty not exceeding ten thousand dollars  
183 per violation be imposed on the contractor or subcontractor. The  
184 awarding agency shall send a copy of any order issued pursuant to  
185 this subsection by certified mail, return receipt requested, to the  
186 contractor or subcontractor named in such order. The awarding agency  
187 may cause proceedings to be instituted by the Attorney General for the  
188 enforcement of any order imposing a civil penalty issued under this  
189 subsection.

190 [(l)] (k) On or before January 1, 2000, the Commissioner of  
191 Administrative Services shall establish a process for certification of  
192 small contractors and minority business enterprises as eligible for  
193 set-aside contracts. Each certification shall be valid for a period not to  
194 exceed two years. [The] Any paper application for certification shall be  
195 no longer than six pages. [Annually, the commissioner shall print a]  
196 The Department of Administrative Services shall maintain on its web  
197 site an updated directory of small contractors and minority business  
198 enterprises certified under this section. [State agencies shall be  
199 provided with updated directory information quarterly.]

200 [(m)] (l) On or before September 30, 1995, and annually thereafter,  
201 each state agency and each political subdivision of the state other than  
202 a municipality setting aside contracts or portions of contracts shall  
203 prepare a report establishing small and minority business set-aside  
204 program goals for the twelve-month period beginning July first in the  
205 same year. Each such report shall be submitted to the Commissioner of  
206 Administrative Services, the Commission on Human Rights and  
207 Opportunities and the cochairpersons and ranking members of the

208 joint standing committees of the General Assembly having cognizance  
209 of matters relating to planning and development and government  
210 administration and elections.

211 [(n)] (m) On or before November 1, 1995, and quarterly thereafter,  
212 each state agency and each political subdivision of the state other than  
213 a municipality setting aside contracts or portions of contracts shall  
214 prepare a status report on the implementation and results of its small  
215 business and minority business enterprise set-aside program goals  
216 during the three-month period ending one month before the due date  
217 for the report. Each report shall be submitted to the Commissioner of  
218 Administrative Services and the Commission on Human Rights and  
219 Opportunities. Any state agency or political subdivision of the state,  
220 other than a municipality, that does not achieve at least seventy-five  
221 per cent of its small business and minority business enterprise set-  
222 aside program goals by the end of the third reporting period in any  
223 twelve-month period beginning on July first shall provide a written  
224 explanation to the Commissioner of Administrative Services and the  
225 Commission on Human Rights and Opportunities detailing how the  
226 agency or political subdivision will achieve its goals in the final  
227 reporting period. The Commission on Human Rights and  
228 Opportunities shall: (1) Monitor the achievement of the annual goals  
229 established by each state agency and political subdivision of the state  
230 other than a municipality; and (2) prepare a quarterly report  
231 concerning such goal achievement. The report shall be submitted to  
232 each state agency that submitted a report, the Commissioner of  
233 Economic and Community Development, the Commissioner of  
234 Administrative Services and the cochairpersons and ranking members  
235 of the joint standing committees of the General Assembly having  
236 cognizance of matters relating to planning and development and  
237 government administration and elections. Failure by any state agency  
238 or political subdivision of the state other than a municipality to submit  
239 any reports required by this section shall be a violation of section 46a-  
240 77.



241     [(o)] (n) On or before January 1, 2000, and annually thereafter, the  
 242 Department of Administrative Services shall establish a precertification  
 243 list of small contractors and minority business enterprises who have  
 244 established a principal place of business in the state but have not  
 245 maintained such place of business for one year and are not in the  
 246 directory prepared pursuant to subsection [(l)] (k) of this section. An  
 247 awarding agency may select a small contractor or minority business  
 248 enterprise from such precertification list only after such awarding  
 249 agency makes a good faith effort to find an eligible small contractor or  
 250 minority business enterprise in the directory and determines that no  
 251 small contractor or minority business enterprise is qualified to perform  
 252 the work required under the contract.

253     Sec. 2. (NEW) *(Effective from passage)* The Commissioner of  
 254 Administrative Services shall adopt regulations, in accordance with  
 255 chapter 54 of the general statutes, that establish size standards for  
 256 small contractors in each business sector in which such contractors,  
 257 subcontractors, manufactures or service companies primarily operate.

258     Sec. 3. Subsection (b) of section 4a-60h of the general statutes is  
 259 repealed and the following is substituted in lieu thereof *(Effective*  
 260 *January 1, 2007)*:

261     (b) The commissioner shall adopt regulations in accordance with the  
 262 provisions of chapter 54 to carry out the purposes of sections 4a-60g to  
 263 4a-60j, inclusive. Such regulations shall include (1) provisions  
 264 concerning the application of the program to individuals with a  
 265 disability; (2) guidelines for a legally acceptable format for, and content  
 266 of, letters of credit authorized under subsection [(j)] (i) of section 4a-  
 267 60g, as amended by this act; (3) procedures for random site visits to the  
 268 place of business of an applicant for certification at the time of  
 269 application and at subsequent times, as necessary, to ensure the  
 270 integrity of the application process; and (4) time limits for approval or  
 271 disapproval of applications.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>January 1, 2007</i>	4a-60g
Sec. 2	<i>from passage</i>	New section
Sec. 3	<i>January 1, 2007</i>	4a-60h(b)

***Statement of Purpose:***

To implement the Governor's budget recommendations.

*[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]*